Apparently not reported up to 15 U.S.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1084~~. 735 ~~420~~ 95

THE PACIFIC EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

THE TAXING DISTRICT OF SHELBY COUNTY, TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED SEPTEMBER 10, 1888.

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INDEX.

	Original.	Print.
Caption	1	1
Petition for writ of error	2	1
Order allowing writ of error	5	2
Bond	6	2
Writ of error	10	3
Citation and proof of service of same	12	3
Transcript from circuit court of Shelby county	14	4
Affidavit for warrant	14	4
Warrant of arrest	15	4
Judgment of Prest. of Board of Fire and Police Commissioners	16	5
Appeal bond	17	5
Appeal to circuit court of Shelby Co.	19	6
Judgment	20	6
Order overruling motion for new trial	21	6
Allowance of appeal	21	6
Bill of exceptions	22	7
Agreed statement of facts	22	7
Chapter V of act of June 12, 1885, &c.	29	8
Certificate to bill of exceptions	33	9
Appeal bond	34	9
Opinion and judgment	37	10
Clerk's certificate	40	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 3, 1888.

1 TAXING DISTRICT OF SHELBY COUNTY
vs.
PACIFIC EXPRESS COMPANY.
1145, Shelby Law Docket.

From supreme court of Tennessee, at Jackson.

Metcalf & Walker, att'ys for plaintiff; Morgan & McFarland, att'ys for defendant.

2 TAXING DISTRICT OF SHELBY CO.
vs.
PACIFIC EXPRESS CO.
No. 1145, Shelby Law Docket.

To the Hon. Peter Turney, chief justice of the supreme court of Tennessee:

Your petitioner, The Pacific Express Company, the defendant in error in the above cause, would respectfully represent unto your honor that at one of the days of the term of the supreme court of said State, held at Jackson, Tennessee, beginning on the first Monday in April, 1888, the said supreme court, over which your honor presides, rendered a decision against your petitioner in the above-stated cause, reversing the judgment of the circuit court of Shelby county. Your petitioner would represent that there was
3 involved in said — a provision of the Constitution of the United States, to wit, art. 1, sec. 8, of said Constitution, commonly known as the provision of said Constitution giving to Congress the power to regulate commerce between the States; and by said judgment, which was based upon an agreed statement of facts shown in the record, the said Pacific Express Co., your petitioner, was held liable for a privilege tax of two hundred and fifty dollars per annum under an act of the Legislature of Tennessee authorizing the said taxing district to levy a privilege tax upon express companies doing business in the State, which said act is fully set out in said agreed statement of facts in the record; and your petitioner represents that it is not liable for said tax, as it will
4 be seen from the record that as an express company it does exclusively an interstate-commerce business and no State business whatever; all of which will appear from said record; and that the judgment against petitioner is therefore violative of article 1, section 8, of the Constitution of the United States; and that said judgment was rendered against petitioner for the penalty of not paying said tax, the sum of fifty dollars, with interest and costs on the same, in favor of the said taxing district, and thereby settling that your petitioner was liable for said tax of two hundred and fifty dollars per annum.

Your petitioner represents that said taxing district is not entitled to collect any tax whatever from this petitioner for doing an
5 interstate business, and that said petitioner, against whom said judgment is rendered, is entitled to have the same reviewed by the Supreme Court of the United States.

Therefore your petitioner prays that your honor endorse an allowance of a writ of error, and that proper citation be signed by your honor, to the end that the record and proceedings in said cause may be removed into the Supreme Court of the United States, to the end that said error may be corrected.

And petitioner will ever pray, &c., as in duty bound.

MORGAN & McFARLAND,
Att'ys for Pacific Express Co.

STATE OF TENNESSEE, AT JACKSON, *May 28th*, 1888.

6 The writ of error prayed for in the foregoing petition is granted and allowed in pursuance of the law in such cases. The petitioner will execute a good bond in the sum of five hundred dollars, to be approved by me.

P. TURNEY,
Chief Justice.

(Endorsed:) Filed May 29th, 1888. Jno. W. Buford, clerk.

Writ of Error Bond.

TAXING DISTRICT OF SHELBY CO., TENN.,
vs.
THE PACIFIC EXPRESS CO.

Writ of error bond to the U. S. Supreme Court.

Know all men by these presents that we, The Pacific Ex-
7 press Company, as principal, and R. J. Morgan, as surety, are held and firmly bound unto The Taxing District of Shelby County, Tennessee, in the sum of five hundred dollars, to be paid to the said Taxing District; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally and firmly by these presents.

Signed, sealed with our seals, and dated this 28th day of May, A. D. 1888.

Whereas the above-named Pacific Express Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Tennessee: Now, therefore, if the above-named Pacific Express Company shall prosecute the
8 said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise remain in full force and virtue.

PACIFIC EXPRESS CO.,
By MORGAN & McFARLAND.
R. J. MORGAN, *Surety.*

UNITED STATES OF AMERICA,
Western District of Tennessee:

I hereby certify that the above bond was duly acknowledged before me, at my office, in Memphis, Tennessee, on the day of its date,

and that R. J. Morgan, the surety therein, is sufficient for the amount of the penalty thereof.

Witness my hand as clerk of the circuit court of the United States for said district and the seal thereof this May 28th, A. D. 1888.

9 [SEAL.] JNO. B. CLOUGH, *Clerk.*

This bond is hereby approved.

P. TURNEY,
Chief Justice of the Supreme Court of the State of Tennessee.

(Endorsed:) Filed June 8th, 1888. Jno. W. Buford, clerk.

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court, before you, between The Taxing District of Shelby County, Tennessee, plaintiff, and The Pacific Express Company, defendant, a manifest error hath happened, to the great damage of the said Pacific Express Company, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1888, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Samuel F. Miller, senior justice of the Supreme Court of the United States, and the seal of the United States circuit court, at Memphis, this 28- day of May, A. D. 1888, and 112th of American Independence.

{ Seal of the Circuit Court of the United States for the District of West Tennessee. }

JOHN B. CLOUGH, *Clerk.*

11 [Endorsed:] No. —. Circuit court of the United States, western district of Tennessee. The Taxing District of Shelby Co., Tennessee, *vs.* The Pacific Express Company. Writ of error. Issued the 28 day of May, A. D. 1888. John B. Clough, clerk.

12 *Citation.*

The United States of America to the taxing district of Shelby county, Tennessee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on

the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, at Jackson, wherein The Taxing District is plaintiff in error and The Pacific Express Company is defendant in error, and show cause, if any there be, why the judgment rendered against said defendant in error in the writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Peter Turney, chief justice of the supreme court of Tennessee, this 28th May, 1888.

P. TURNEY,
Chief Justice.

Service of the above citation acknowledged for the taxing district.

May 28, 1888.

S. P. WALKER,
Attorney for Tax'g Dist.

13 [Endorsed:] Citation. Taxing District *vs.* Pacific Express Co. Filed May 29th, 1888. Jno. W. Buford, cl'k.

14 STATE OF TENNESSEE:

At a term of the circuit court of Shelby county, begun and held in the taxing —, at the court-house, on the 3rd Monday in March, 1888—present and presiding, the Honl. L. H. Estes, judge, &c.; also present, Dan'l Schloss, clerk of said court, and W. D. Cannon, sheriff of Shelby county—when the following proceedings were had, to wit:

Affidavit

TAXING DISTRICT OF SHELBY COUNTY,
State of Tennessee:

Before me this day personally appeared P. F. Simons and
15 made oath that the Pacific Express Co. (W. J. Brown, ag't) did, since the 1 day of Jan'y, 1886, in said district and within the jurisdiction of the police court of the taxing district, commit the offence of doing business as an express Co. without license, contrary to law and the ordinances of said district.

Warrant of Arrest.

Taxing district, Shelby county, State of Tennessee, to any officer of the police:

Information on oath having been made to me that the offense of doing business as an express Co. has been committed with- the taxing district in violation of the ordinances of said district and accusing the Pacific Express Co.—W. J. Brown, ag't thereof—you are therefore commanded, in the name of the president of the fire
16 and police commissioners of the taxing district, to arrest him and bring him before the president — fire and police commis-

sioners, in the taxing district and county of Shelby, to answer the charge this 10 day of May, 1886.

P. J. QUIGLEY, *J. P.*

Endorsed: Issued May 10, 1886. Executed May 11, 1886, by arresting the within-named person. Cullen, officer.

Judgment.

THE PRESIDENT OF THE FIRE & POLICE COMMISSIONERS OF THE TAXING DISTRICT, SHELBY COUNTY, STATE OF TENNESSEE,

vs.

PACIFIC EXPRESS CO.—W. J. BROWN, Ag't.

It is considered by me in this case that the defendant is
17 guilty of doing business without license, as charged in the warrant, and that he pay a fine of ($50.00) fifty dollars, and in default of the payment of said fine that he be committed to the work-house, the district prison, until said fine and costs be paid.

D. P. HADDEN,
President of Fire and Police Commissioners.

Appeal Bond. Filed Sept. 20, '86. *J. T. Tomlinson, D. C.*

Know all men by these presents that we, W. J. Brown, agent of the Pacific Express, as principal, and Morgan and McFarland are held and firmly bound unto The Taxing District of Shelby County, Tennessee, in the sum of two hundred and fifty dollars; for the pay-
ment of which we bind ourselves, our heirs, our executors,
18 administrators, and assigns.

Witness our hands and seals this 19th day of May, 1886.

The condition of the above obligation is such that whereas the said W. J. Brown was arraigned before D. P. Hadden, the president of fire and police commissioners of said district, on the 19th day of May, 1886, upon a charge of doing business without license for said company in violation of the ordinances of the said district, and was found guilty as charged and fined fifty dollars and costs, from which judgment of said president he prayed and obtained an appeal to the next term of the circuit court of Shelby county, to be held at the court-house thereof on the — Monday in ——, 1886:

Now, if the said W. J. Brown, ag't, shall prosecute his said
19 appeal successfully, or, in case of failure, shall abide by and perform the judgment of said circuit court of Shelby county in the premises, then this obligation to be void; otherwise to remain in full force and effect.

W. J. BROWN. [SEAL.]
MORGAN & McFARLAND. [SEAL.]

Approved:
D. P. HADDEN,
President of Fire and Police Commissioners.

Be it remembered that on the 19 day of May, A. D. 1888, W. J. Brown, agent of Pacific Co., was arraigned before me, the president of the fire & police commissioners of the taxing district of Shelby county, State of Tennessee, upon a charge of doing business without a license, in violation of the ordinances of said taxing district, within the corporate limits of the taxing district of Shelby
20 county, and, having entered his plea of not guilty thereto, the case was heard by me.

Whereupon the said W. J. Brown was found guilty as charged and fined fifty dollars and costs, from which said judgment he prayed and obtained an appeal to the next term of the circuit court of Shelby county.

Witness my hand and seal this 19 day of May, 1886.

D. P. HADDEN. [SEAL.]
President of Fire and Police Commissioners.

And on, to wit, Saturday, May 5th, 1888, March term, 1888:

Judgment. Order Overruling Motion for New Trial and Filing Bill of Exceptions; Also Perfecting Appeal.

21 THE PRESIDENT OF FIRE AND POLICE COMMISSIONERS OF THE TAXING DISTRICT OF SHELBY COUNTY, T. D., *vs.* PACIFIC EXPRESS COMPANY. } 9163.

The parties appeared by their attorneys, and this being a non-jury case the matters in controversy were tried by the court, and the court, being of opinion that the defendant is not liable to the tax sought to be imposed, *and* therefore finds for defendant.

It is therefore considered by the court that the defendant go hence and recover of the plaintiff the costs herein, for which let execution issue.

To which judgment of the court plaintiff excepts and moves the court to grant a new trial, which motion is overruled; where-
22 upon plaintiff prays an appeal, in the nature of a writ of error, to the present term of the supreme court, now sitting at Jackson, Tennessee, which is granted upon execution of appeal bond, with security, in penalty of two hundred and fifty dollars, properly conditioned, &c.; and thereupon plaintiff tendered its bill of exceptions, which is signed by the judge presiding and filed as part of the record in this case. Plaintiff presented an appeal bond, with C. W. Metcalf as surety, which is approved by the court and the appeal herein perfected.

Bill of Exceptions. Filed May 5, '88. *Geo. J. Campbell, D. C.*

Circuit Court of Shelby County.

TAXING DISTRICT OF SHELBY COUNTY
vs.
THE PACIFIC EXPRESS COMPANY. } # 9163.

23 Agreed statement of facts in the above case.

It is agreed that the Pacific Express Company is a corporation chartered by the laws of the State of Nebraska to do a general express business; that said express Co. is doing an express business in the States of Nebraska, Kansas, Missouri, Arkansas, Texas, and Tennessee; that said express Co. has an office in the city of Memphis; that it has no other office in the State of Tennessee, and that in said office it has the necessary office force of agents and clerks and the necessary teams & wagons to do the express business in the city of Memphis; that said express Co. operated the railroad lines of the Kansas City railroad and the Memphis and Little Rock railroad from their
24 terminal points in the city of Memphis to and across the Mississippi river over the incline of said road; that all the freight of every description that said express Co. distributed in the city of Memphis and State of Tennessee is freight brought from other States out of Tennessee, and that no freight is collected or received inside of the State of Tennessee to be distributed in Tennessee; that there is no other receiving or distributing point inside of the State of Tennessee but the general office in the city of Memphis, which office is established and used to do only the aforesaid business.
It is further agreed that the Pacific Express Company gathers
25 up its freight in the city of Memphis by express wagons, to be shipped over the lines of the railroad above mentioned, and that all their freight is shipped beyond the State of Tennessee into other States and none delivered inside of the State of Tennessee, and that it does not do any business whatever in the State of Tennessee except receiving freight and charges and receiving freight for distribution, as above stated. It is further agreed that the Pacific Express Company is purely an express company and a carrier of merchandize of any description; that it does no other business except the express business; that it has an agent, clerk, &c.,
26 in the city of Memphis, and that it uses its wagons for the collecting and distributing its freight solely as above specified.

It is further agreed that by general act of the Legislature the State of Tennessee charges a license tax upon express companies with lines less than one hundred miles — $1,000.00 per annum, and that said act also has in it an exception in parenthisses (in lieu of all other taxes), and that the statutes fixing said rate may be used in evidence, and that in all the courts in which this case may be tried "said act may be used without copying the same in record."

It is further admitted that said express company has paid all taxes due from it to the State, county, and taxing district of Shelby
27 county up to the year 1886, and that for that year and all the previous years it has paid the State the full amount of taxes claimed by the State for privileges, and also the ad valorem tax for property it holds in the State of Tennessee and ad valorem tax due the county and taxing district up to date of bringing this suit.

It is further agreed that there is now pending a case in the supreme court of Tennessee, on appeal from the circuit court of Shelby county, in which the said express company is seeking to recover from the State the privilege tax of $1,000, annually paid to the State for the years 1885 and 1886, with interest on the same; which tax was paid under protest, is
28 alleged to be illegal, and is sought to be recovered from the State. It is further agreed that in this suit the Pacific Express Company is insisting that the taxing district cannot collect any privilege tax from it because the said district is prohibited from the collection of said tax, because the same is illegal and void and contrary to the Constitution of the United States, art. 1, sec. 8, and that said tax is an attempt to regulate commerce between the States, which right belongs exclusively to the legislative department of the United States; and such provision of the Constitution is set up and relied upon as a defense to this suit.

29 The said express Co. further sets up and relies upon the act of the Legislature, passed on the 12th day of June, 1885, chap. 5 of extra sessions 1885, for a defense to this suit, and insists that the taxing district claim against it is illegal because of said act; which is as follows:

CHAPTER 5.

"A bill to be entitled An act to provide revenue for the State of Tennessee and the counties thereof.

"SEC. 5. Be it further enacted that the following corporation shall pay directly to the comptroller's office the following taxes:

Express companies.

"(In lieu of all other taxes except ad valorem tax.) If lines
30 are less than 100 miles long, per annum, $1,000 (and this shall be in lieu of all other taxes); if lines are over 100 miles long, per annum, $2,500.00 (and this shall be in lieu of other taxes). The taxing district sets up and relies upon the act of the Legislature requiring each express company to pay an annual privilege tax of $250.00, being ch. 96, section- 12 & 13, of the acts of 1881, and said acts of the Legislature in full may be used on the hearing of this cause in any of the courts of the State or the United States.

CHAPTER XCVI.

"An act to amend sections five (5), seven (7), nineteen (19), and

twenty-three (23) of an act passed January 29, 1879, approved
31 January 31st, 1879, entitled An act to establish taxing districts in this State and to provide the means of local government for the same; and also to amend section six (6), subsections two (2), seventeen (17), thirty-one (31), thirty-five (35), thirty-six (36), thirty-seven (37), forty-six (46), forty-nine (49), fifty (50), fifty-two (52), fifty-three (53), fifty-four (54), fifty-six (56), and adding also subsections fifty-nine (59) to section seven (7) and amending section eight (8) of an act entitled An act to establish taxing districts in the State and to provide the means of local government for the same, amendatory act having passed on the 12th day of March, 1879.

32 "SEC. 13. Be it further enacted that subsection thirty-seven (37) mentioned in the caption of this act be amended to read as follows:

"Express companies and railroads having an express department or engaging in the express business on account of themselves or others transporting goods to distant points shall pay an annual tax of ($250) two hundred and fifty dollars, besides the tax on vehicles."

It is further agreed that the tax levied by the taxing district as a privilege tax is $250.00 per annum, and that said tax has not been paid for the year 1886 or since that time, and that said company not having paid said tax it was fined by the president
33 of the taxing district, and that the same was appealed to this the circuit court, and that it is upon this appeal that the question of liability arises; and, to determine this matter, the above agreed statement of facts is made, upon which the judgment of the court, as its opinion of the law as applicable to said facts, may be entered.

May 4, '88.

S. P. WALKER,
Att'y for Taxing District.
MORGAN & McFARLAND,
For Express Company.

This was all the evidence.

The pl'ff tenders this its bill of exceptions to the judgment of the court and the order overruling pl'ff'- motion for a new trial, and the same is now signed and sealed and made a part of
34 the record this May 5, 1888.

L. H. ESTES, *Judge.*

Appeal Bond.

Know all men by these presents that we, the Taxing District of Shelby County, principal, and C. W. Metcalf, surety, are held and firmly bound unto the Pacific Express Company in the penal sum of two hundred and fifty dollars; for the payment of which, well and truly to be made and done, we bind ourselves and each of us, our heirs and executors, administrators and assigns, both jointly and severally, firmly by these presents. Sealed with our seals and dated this 5th day of May, A. D. 1888.

But the condition of the above obligation is such that whereas the above-bounden taxing district this day prayed and obtained an appeal in the nature of a writ of error to the present supreme court, now sitting for the western division of the State of Tennessee, at Jackson, from a judgment which the said Pacific Express Company obtained against it in the circuit court of Shelby county, at the March term, on the 5th day of May, 1888, for costs of suit:

Now, if the said appel-ant prosecute its said appeal with effect or, in case it fail therein, do pay and satisfy, abide by and per-
form, the judgment, order, or decree of the said supreme court to be had therein and all such costs as may be awarded against it for wrongfully prosecuting said appeal, then this obligation to be void; otherwise to remain in full force and effect.

TAXING DISTRICT OF SHELBY CO., [SEAL.]
By C. W. METCALF.
C. W. METCALF, *Surety.* [SEAL.]

Endorsed: Filed May 5th, 1888. Geo. J. Campbell, D. C.

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, at the April term, A. D. 1888—present, the Hon. Peter Turney, chief justice, and D. L. Snodgrass, H. H. Lurton, W. C. Caldwell, and W. C. Folkes, associate judges—when the following proceedings were had, to wit:

TAXING DISTRICT OF SHELBY COUNTY *vs.* PACIFIC EXPRESS COMPANY. } #1145, Shelby Law Docket.

MONDAY, *May 28th*, 1888.

This cause came on to be heard upon the transcript of the record from the circuit court of Shelby county, and after argument of counsel this court is of opinion—

1st. That chapter 5 of the acts of the extra session of the year 1885 of the Legislature of this State did not operate to repeal sec. 13 of chapter 96 of the acts of 1881, by which a privilege tax of $250.00 annually is required to be paid to the plaintiff in error by all express companies doing business within the limits of said taxing district, and that under the latter act the defendant in error was liable to the plaintiff in error for said sum of $250.00 privilege tax as aforesaid.

2nd. The court is of opinion, upon the agreed facts in the record upon which the case is heard, that the defendant in error has failed to show that the imposition upon it of the said privilege tax on
account of the express business done by it within the limits of said taxing district is violation of article 1, section 8, of the Constitution of the United States, conferring upon the Congress of the United States power to regulate commerce among the States, and

that the facts in the record do not bring the defendant in error within the protection of said provision of the Constitution of the United States, this court being of opinion that said privilege tax is not a regulation of commerce and not forbidden by the aforesaid clause of the Constitution of the United States.

It is therefore considered by the court that the judgment of the circuit court of Shelby county be reversed, and that the plaintiff in error, The Taxing District of Shelby County, recover of the defendant in error, The Pacific Express Company, and of Morgan & McFarland, sureties on their appeal bond, the sum of $50.00, together with $6.10 interest thereon from the 19th day of May, 1886, and that the said defendant in error and their said sureties pay all the costs of this court and of the court below; for all of which debt, interest, and costs execution will issue.

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the record & judgment pronounced by said court at its April term, 188–, in the case of Taxing District of Shelby County against Pacific Express Company, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 15th day of August, A. D. 1888, and of the Independence of the United States the 113th year.

[Seal Supreme Court of Tennessee, Western Division, Jackson, Tenn.]

JNO. W. BUFORD, *Clerk*,
By ROB'T LINDSEY, *D. C.*

Endorsed on cover: Tennessee sup. court. No. 1084. The Pacific Express Company, plaintiff in error, *vs.* The Taxing District of Shelby County, Tennessee. Filed September 10, 1888.